

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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PETER J. BATTAGLIA, Jr., a/k/a  
PETER J. BATTAGLIA and  
PETER BATTAGLIA

Civil Action No.:  
1:24-cv-00052-LJV

BATTAGLIA DEMOLITION, INC.,

Plaintiffs,

-against-

OHIO SECURITY INSURANCE COMPANY  
LIBERTY MUTUAL INSURANCE,

Defendants.  
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**DECLARATION IN  
SUPPORT OF  
MOTION TO DISMISS**

**GLENN P. BERGER**, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am associated with JAFFE & ASHER LLP, attorneys for defendants OHIO SECURITY INSURANCE COMPANY (“Ohio Security”) and LIBERTY MUTUAL INSURANCE COMPANY (“Liberty Mutual”) (“collectively “Defendants”); as such, I am fully familiar with the facts and circumstances set forth herein.

2. I submit this declaration in support of Defendants’ motion for an Order, pursuant to Fed. R. Civ. P. 12(b)(6), as follows: (1) dismissing the Complaint in its entirety as to Liberty Mutual for failure to state a claim upon which relief can be granted; (2) dismissing plaintiffs’ first claim for relief for breach of the implied covenant of good faith and fair dealing for failure to state a claim upon which relief can be granted; (3) dismissing plaintiffs’ third claim for relief for declaratory relief for failure to state a claim upon which relief can be granted; (4) dismissing plaintiffs’ prayer for recovery of consequential damages; (5) dismissing plaintiffs’ prayer for recovery of attorneys’ fees; (6) dismissing plaintiffs’ prayer for recovery of punitive damages; and (7) granting such other and further relief as this Court deems just and proper.

3. On or about August 21, 2023, plaintiffs Peter J. Battaglia, Jr., a/k/a Peter J. Battaglia and Peter Battaglia (“Battaglia”) and Battaglia Demolition, Inc. (“BDI”) (collectively, “Plaintiffs”) commenced this action by the filing of a Summons and Complaint in the Supreme Court of the State of New York, County of Erie. By Notice of Removal dated and filed January 11, 2024, the case was removed to this Court. A true and complete copy of the Complaint (ECF Doc. No. 1-1) is annexed hereto as Exhibit “A”.

4. A true and complete copy, redacted only for premium information, of the Commercial Lines policy, No. BKS (22) 58 77 61 81, with a policy period from April 20, 2021 to April 20, 2021, to Battaglia and BDI, as the Named Insureds, is annexed hereto as Exhibit “B”.

5. A true and complete copy of an Order and Judgment of the Honorable Deborah A. Chimes entered June 18, 2018 and accompanying transcript of Decision dated April 2, 2018, in an action entitled People of the State of New York et. al. v. Battaglia et. al., Supreme Court, Erie County Index No. 2016-805668, is annexed hereto as Exhibit “C”.

**WHEREFORE**, it is respectfully requested that this Court grant Defendants’ motion to dismiss the Complaint as to defendant Liberty Mutual and dismiss Plaintiffs’ claims for bad faith and for consequential damages, attorneys’ fees, punitive damages and declaratory relief in their entirety.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 20, 2024, in White Plains, New York.

  
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GLENN P. BERGER